

**MINUTES**  
**Approved by the Committee**  
**Judiciary and Rules Working Group**  
**Tuesday, July 28, 2020**  
**9:00 AM to Noon**  
**State Capitol**  
**Boise, Idaho**

Cochair Representative Chaney called the meeting to order at 9:00 a.m.; a silent roll was requested.

Members present: Cochair Representative Greg Chaney and Representatives Jason Monks, Ryan Kerby, Paul Amador, Christy Zito, Bryan Zollinger, Barbara Ehardt, Heather Scott, Bill Goesling, Linda Hartgen, Gary Marshall, Doug Ricks, Caroline Troy, Julianne Young, John Gannon, John McCrostie, Melissa Wintrow, and Muffy Davis; Cochair Senator Cochair Todd Lakey and Senators Abby Lee, Patti Anne Lodge, Kelly Anthon, Steven Thayn, C. Scott Grow, Don Cheatham, Grant Burgoyne, and Mark Nye; Legislative Services Staff (LSO) Ryan Bush, Jared Hoskins, Shelley Sheridan, Jennifer Kish, and Jackie Gunn.

Other attendees: There were no public sign-in sheets as this was a remote electronic meeting. Meeting presenters are listed as they appeared.

Note: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website <https://legislature.idaho.gov/sessioninfo/2020/interim>; and copies of those are on file at the Legislative Services Office in the State Capitol.

#### **Opening Remarks and Stakeholder Input on Possible Covid-19 Liability Reform**

Co-chairs Chaney and Lakey made preliminary remarks and then introduced **Mr. Alex LaBeau, President of the Idaho Association of Commerce & Industry (IACI)**. Mr. LaBeau addressed liability reform from a business perspective. He remarked that the IACI members support the essential infrastructure of much of society. As such, IACI members have remained at work throughout the pandemic. He noted that other states have adopted legislation that has exempted their IACI business members from liability. He further stated that though Idaho is very strong in its tort liability laws, Idaho has very little protections when it comes to emergency situations like the pandemic. He emphasized the need to limit the breadth of such legislation, as there is no wish to exempt people who are completely reckless. Continuing, he opined that liability exemptions should be in place for those business members that are doing their best to provide for the public good while providing the safest possible work environment.

Cochair Lakey reminded members of their charge to look at the liability protections that presently are in place, and to identify those protections not in place. taking into account public health and safety, the ability for businesses and individuals to function, and the economic consequences of actions to take no action, amend existing provisions, or add provisions in this area of law. He stated that there is a pronounced sense of urgency to address this issue, with businesses continuing their operations and schools preparing to open. Cochair Chaney echoed Cochair Lakey's remarks, stating that today's work will involve a fact-finding endeavor, and then following up with getting feedback from working group members. He observed that this activity might culminate in a determination of whether some legislative change is in order.

#### **Advance Planning for the 2021 Session**

Cochair Chaney introduced **Mr. Eric Milstead, Director of the Legislative Services Office (LSO)**. Mr. Milstead summarized his [presentation](#) that detailed the potential options the Legislature might consider when revising the manner in which it conducts its work. He explained that the suggestions expressed were framed around the options of social distancing work, remote work, and hybrid work. He then highlighted the aspects of the hybrid approach and pointed to the necessary technology

improvements, which include an upgraded audio/video (A/V) system for the house chambers and meeting rooms. Mr. Milstead addressed the necessary Statehouse network hardware upgrades and IPTV-requested hardware/software improvements, noting the IPTV-related upgrades will allow them to stream – both video and audio – from both chambers and all committee rooms. Though the upgrade work will require the temporary closure of meeting rooms, Mr. Milstead assured the members that his staff will work diligently to provide meeting space when needed. He briefly reviewed the proposed seating arrangements on the floor of both chambers. The Senate will remain in their chamber after desks are rearranged to allow for social distancing. One option under consideration for House chamber seating includes splitting the membership, half of the members located on the chamber floor, and half perhaps located in EW42, with real time visual as well as real time audio in place. Mr. Milstead concluded his remarks, reporting the following:

- The Idaho Capitol Commission unanimously approved the suggested A/V upgrades in July;
- Funding of approximately \$1.2 million was secured through the Governor’s Coronavirus Financial Advisory Committee; and
- The Department of Administration’s Division of Public Works (DPW) approved DPW and LSO to enter into public works contracts to begin the project.

Representative Wintrow observed that when some of the working group members are participating remotely while others are participating in person it is quite difficult to maintain a fair playing field for communicating between members and between members and presenters. She asked the members to consider this as the bodies move toward application of a hybrid model. Representative McCrostie asked if the Legislative Council hadn’t recently considered the Senate members using the House floor and the House members going to the Chinden campus to allow for social distancing. Mr. Milstead stated the Chinden campus is no longer under consideration and added there are other options near the Statehouse under consideration. Senator Nye noted that the state of Missouri has filed a suit against China and its related entities, and cautioned against giving accidental blanket immunity to entities like that.

Cochair Chaney invited **Ms. Carrie Maulin, Chief Clerk of the House of Representatives**, to proceed with her [presentation](#). Ms. Maulin reviewed two “Continuity of Government Operations” documents, which included the suggested House Rule to adopt and Joint Rule to invoke during an emergency should there be a need to allow members to participate in the Legislature while observing safety protocols that require social distancing using a designated alternate location, and/or remote participation through electronic means. Ms. Maulin explained the need for a rule change when the House and Senate members participate in any way other than all members attending in their physical house chamber location. She noted that both documents include a "definition of terms" section that refers to terms used in the both rule drafts. She stated that these drafts provide the basic guidelines for what will have to happen in order to make this a safe and secure process for the members as they go through the legislative session.

Cochair Chaney invited **Ms. Jennifer Novak, Secretary of the Senate**, to proceed with her [presentation](#). Ms. Novak reviewed the “Special Rule of the Senate during an Emergency Proclamation” document, indicating that she and Ms. Maulin took a very close look at House and Senate Rules and Joint Rules and she briefly noted the highlights of the draft recommendations. She encouraged the members to contact either Ms. Maulin or herself if they have either input or questions related to the drafts, as they wanted to make certain members had the opportunity to refine it move forwarding in preparation for the legislative session.

Representative McCrostie asked Ms. Maulin if the members had to wait until the first day of the regular session to address the rules or if they could act upon rule changes during the organizational session. Citing her research extending back to 1969 on this issue, Ms. Maulin responded that members can adopt rules and make change rules during an organizational session. She added that the authority for this is delineated in statute.

## Stakeholder Input on Possible Covid-19 Liability Reform (continued)

Cochair Chaney introduced **Mr. Matt Freeman, Executive Director of the Idaho State Board of Education**. Mr. Freeman began his [presentation](#) by stating that though the State Board is certainly aware of the liability reform issue for Idaho institutions and schools, it has not yet taken a formal position on possible Covid-19 limitation of liability, so the following remarks to the working group members are his alone. He commented on how the public higher education institutions, school districts and charter schools are working to safely offer in-person instruction. And he listed immediate challenges that must be addressed by institutions and schools; such as, higher education institutions with on-campus housing, ensuring physical distancing for in-person classroom instruction, and ensuring compliance with applicable on-campus requirements for face masks, physical distancing, hand washing and additional sanitation requirement for facilities. He stated that if the Legislature concludes that legislation limiting liability from damages resulting from Covid-19 is warranted, it would seem reasonable to provide that protection to the institutions and schools (public and private) that have followed their plans to limit transmission. Mr. Freeman closed his remarks by stating that time is of the essence if the Legislature concludes that additional liability limitations are needed, because the risk of claims for opening will begin in earnest with the return of students to campus. And, he emphasized the need for clear limits to liability before the semester begins or as soon after beginning as feasible.

Senator Burgoyne asked if anyone on the State Board has drafted suggested language on this liability topic. Mr. Freeman responded that the State Board has been working with the Attorney General's office and, based on suggestions from General Counsel, it has begun crafting language on areas the State Board finds essential to address by the Legislature. Senator Burgoyne asked Mr. Freeman to send the cochair a copy of the drafted language. Representative Wintrow asked if the State Board has the authority to establish a minimum criteria for all educational institutions. Mr. Freeman stated that it is a complicated question, because though the State Board has broad authority it must respect local control. Representative Wintrow asked what happens to local school districts that fall within a county or city requiring some mandates they choose not to follow. Mr. Freeman stated that when there is a city or county public health order, the school district or charter school within that city or county must comply with the order. Representative Troy stated her desire that any liability protection provisions enacted cover both private and public institutions of learning. Mr. Freeman restated his earlier remark and emphasized that institutions and schools (both public and private) should be provided protection if the Legislature concludes that legislation limiting liability from damages resulting from Covid-19 is warranted .

Cochair Chaney introduced **Ms. Karen Echeverria, Executive Director of the Idaho School Boards Association (ISBA)**, who in turn recognized **Mr. Andy Grover, Executive Director of the Idaho Association of School Administrators (IASA)**. Ms. Echeverria observed that school districts and charter schools are in a unique position. They are constitutionally required to educate students, yet the fulfillment of this mandate is significantly threatened by the requirements set out by the local health districts. After discussing examples of the challenges faced by the districts and remedies that districts have pursued, she indicated the association requests the Legislature convene a special session to address this issue.

Cochair Chaney invited Mr. Grover to add his comments. Mr. Grover stated that he echoed Ms. Echeverria's concerns and he too requests that the Legislature convene a special session to address this topic. He added that Section 33-512, Idaho Code, which allows the health districts to close schools, should be addressed because the IASA believes local school boards should have the power to open and close schools. He opined that the health districts are there to give input but it is the elected officials that have the right to make those decisions. Senator Burgoyne suggested the value in making the subject of Covid-19 part of the curriculum. Ms. Echeverria commented that the school districts are already actively talking about Covid-19 as they work toward opening their schools and keeping their school children safe. Mr. Grover followed-up adding that he hoped

the legislation enacted in special session will give the schools as many opportunities to open as possible, and do it in a safe manner.

Cochair Lakey asked for suggestions about when best to convene a special session in order to meet the school district timelines for opening. Mr. Grover replied that many of the schools are opening in mid-August. Representative Gannon asked if all of the schools were going to offer a virtual alternative to physical attendance in the classroom. Ms. Echeverria said every school district and charter school is making plans to have some sort of online learning for all students and staff who fall into those compromised categories. Senator Thayn stated his sense of urgency to address the liability exposure of schools with a special session. He asked Ms. Echeverria if she or Mr. Grover had identified templates from other states that appeal to them. Ms. Echeverria stated her association is looking at a more broad immunity provision, one that would protect businesses as well as schools. Representative Kerby asked what impact the reported loss of liability insurance will have on schools. Ms. Echeverria commented that her first thoughts go to the teachers, and she wonders what liability will rest on a teacher if a child gets sick. Mr. Grover opined that having the waiver in place will allow their efforts to open schools to move forward.

Senator Nye stated schools already enjoy immunity and asked what other immunities the schools might need. Ms. Echeverria responded that she doesn't believe they have immunity. Senator Nye stated he was referring to the Tort Claims Act for individual immunity. Ms. Echeverria replied that she didn't believe the schools were included under the act. Senator Burgoyne asked Ms. Echeverria to send the cochairs an email that states the scope of protection they are requesting from a liability waiver provision and to also provide the legislation from the other states. He also asked her to discuss the association's position regarding worker's compensation immunity protections for staff. Ms. Echeverria stated they are looking for Covid-specific immunity, similar to that which has been granted in other states. She agreed to forward the legislation from other states and stated her intention to work with Mr. Stark on a response to the question posed about worker's compensation.

Representative Wintrow asked what would incentivize someone to really adhere to mandated safety guidelines in the classroom if a liability exemption is in place. Ms. Echeverria replied that each school has created their safety plans and they will follow those safety plans. Schools will decide in each community which plan is best for their students, staff, and parents. Addressing the topic of liability reform, Senator Thayn discussed the strengths of using the diffused responsibility model, which is a model where each individual is responsible to make the final decision. Representative Kerby asked that Ms. Echeverria provide the committee with the [Idaho Counties Risk Management Program \(ICRMP\) letter](#) and Ms. Echeverria agreed to provide the letter to members. Senator Nye cited Section 6-902(2), Idaho Code, and asked Ms. Echeverria to check with General Counsel to confirm that immunity coverage for school boards is provided for under the Idaho Tort Claims Act.

Cochair Chaney introduced **Mr. Paul Stark, General Counsel for the Idaho Education Association**. Speaking to the legal liability issue, Mr. Stark opined the way to avoid liability is to either reduce the risk elements or meet the duty of care standard. The school district's liability will go up and down depending on the level of risk at that school's location. With education funding being cut, it becomes more difficult to provide the preventative measures, so the potential liability exposure increases. He added that worker's compensation law has established that it is the sole remedy for workplace injuries and school staff will be protected from liability under the *respondeat superior* principle. He stated that he agreed that the Tort Claims Act will provide some immunity and will limit the number of cases. Mr. Stark stated that there are legal principles and precedent on the books that will be applicable for tort claims related to Covid-19. He opined the best way to limit liability is to increase the resources to schools and the best way to limit or eliminat risk is by not prematurely opening the schools.

As it relates to liability, Senator Thayn asked Mr. Stark to address the challenge of determining the community safety standards for Covid-19, as it is such a politicized topic. Mr. Stark replied that

the duty of care will be established by the community standard. In a trial setting, experts would testify as to what the community standards would be. He highlighted the broad mandate contained in Section 33-512, Idaho Code, which states a district has a duty to protect the health, safety, and welfare of the children within the district. He added that he agrees with Senator Nye that there is already immunity granted to school districts under the Tort Claims Act for such claims. Representative Gannon asked how schools with very small classrooms can meet the 6-foot social distancing requirement. Mr. Stark replied that many things can be done with the backing of the Legislature and the governor. Representative Wintrow asked what exactly is deficient currently in Idaho laws with regard to liability claim exposure. Mr. Stark explained there is inadequate funding for resources. In this time of rising threats to people's health due to Covid-19, we have decreased funding to meet the need. Senator Burgoyne voiced his support for Mr. Stark's point about inadequate resources. He stated that the goal should be to actually make our schools safer.

Cochair Chaney introduced **Mr. Seth Grigg, Executive Director of the Idaho Association of Counties**. Mr. Grigg identified the pandemic as much different than other natural disasters faced by counties. ICRMP, the primary insurer of local units of government in Idaho, has specifically excluded the pandemic from coverage. Mr. Grigg detailed three areas under county administration oversight: jury trials, elections, jails. He stated that the Tort Claims Act limits liability but does not provide immunity. He opined that for counties to resume safe elections, safe jury trials and to safely operate our jails, the counties need liability protection. And, he observed there is a need to convene a special session to enable those protections to be in place prior to the August election and prior to jury trials resuming.

Representative Gannon asked Mr. Grigg what incentives the county governments have to meet the mandated requirements if they enjoy blanket immunity. Mr. Grigg replied the counties are doing everything in their power to comply with requirements. He added that when we consider providing liability protections for counties, we are in fact considering protecting and shielding the property taxpayers of the counties. Cochair Chaney asked Mr. Grigg to review Section 6-904(1), Idaho Code, and prepare a written response for the working group that explains how the statute does not provide liability protections.

Cochair Chaney introduced **Ms. Kelley Packer, Executive Director of the Association of Idaho Cities**. Ms. Packer replied that elected officials have been trying to make wise decisions during the pandemic and are concerned about the liability they might have as they make the decisions to open parks and libraries, and as they address how to manage how city halls function, such as open meeting requirements. Ms. Packer echoed the wish expressed by those who would like to see a discussion about what is currently on the books and what may be needed to provide coverage for local municipalities, schools, and businesses during pandemics.

Senator Thayn asked Ms. Packer and Mr. Grigg, to comment on how governmental entities dealt with the flu versus the present pandemic. Ms. Packer responded the difference lies in how the Centers for Disease Control and Prevention (CDC) and our own governor declared an emergency with the pandemic and have presented guidelines to the public health districts for what must be followed due to this pandemic. She noted that they didn't see this with the flu. Senator Thayn followed up, asking if she meant the actions taken by the CDC and the governor have increased the potential for liability, in those instances when you don't follow their guidance. Ms. Packer agreed.

Cochair Chaney introduced **Ms. Toni Lawson, Vice President of Government Relations for the Idaho Hospital Association**. Ms. Lawson stated that hospitals and clinics are operating at a level of uncertainty not seen before. Those treating the majority of Idaho cases are dealing with ICUs operating at near capacity or capacity, staffing challenges and supply challenges, not to mention treatment protocols continue to change and adapt as we gain more knowledge of the disease and successful ways to treat it. She continued detailing the challenges faced by hospital staff, including asking specialists to perform in areas outside of their trained expertise.

Ms. Lawson indicated there was some disagreement among her organization's members concerning how much immunity hospitals have right now. She asked that if the Legislature convenes a special session, that they address issues, such as the scope of immunity that includes liability from injuries alleged to have resulted directly or indirectly from acts of omission related to planning, preparation and relief efforts, and liability in the area of availability of testing, canceling and postponing non-emergency surgeries. She asked that the Legislature also provide clarity related to the guidelines hospitals must follow, noting the conflicting guidelines between state and federal entities.

Senator Nye asked if there were any current lawsuits for malpractice in Idaho regarding claims for Covid-19. Ms. Lawson indicated that she wouldn't have that information directly but added that she was not aware of any lawsuits. Senator Thayne indicated that he heard that there was at least one case in progress at present and offered to get more details related to it. Observing that such cases would be jury trials, Representative Wintrow asked why we wouldn't put trust in the juries to determine what is appropriate and what is frivolous. Ms. Lawson responded that their goal is to avoid any trial. She highlighted the fact that "community standards of care" are in flux, so it would be difficult to determine which community standard of care we're talking about and which guidelines we should follow.

Senator Burgoyne asked if the local standard of care governs in cases of negligence law. Ms. Lawson agreed that it does. Senator Burgoyne then asked if, in times of emergency, the standard of care changes due to lack of resources. Ms. Lawson agreed that the standard of care changes in an emergency situation but expressed concern for a hospital's liability exposure when delaying procedures such elective surgeries due to supply or staffing shortages.

Cochair Chaney introduced **Ms. Caroline Merritt, Executive Director of the Idaho Chamber Alliance**. She stated that the alliance is very much in support of extending liability coverage to businesses to protect them from potential Covid-19-related lawsuits and she appreciates the Legislature's consideration of this issue. She stated that the alliance is concerned about the time and the money businesses would have to spend defending themselves against a lawsuit of this nature, especially while they are still trying to pull themselves out of the effects they have experienced due to Covid-19. She stated that over 3,700 Covid-19-related lawsuits have already been filed across the country for various reasons. Continuing, she noted that at least 11 other states have passed legislation or issued an executive order that would shield business owners from litigation if the patron claims to have contracted Covid-19 at their place of business. She concluded that extending liability coverage to businesses in no way authorizes them to engage in reckless behavior or to flaunt the guidelines, nor does it prevent employees from filing worker's compensation claims for Covid-19-related issues. Instead, coverage allows businesses to focus their resources on maintaining safe operations while trying to rebound from the hardships imposed on them from Covid-19. She stated that the alliance is asking the Legislature to step in and help with this issue.

Senator Burgoyne asked Ms. Merritt to provide a written update on the principle aspects of the bill moving through Congress that has a liability provision supported by the National Chamber Association. Ms. Merritt agreed to provide this information. She emphasized that though the U.S. Senate has put a Covid-19 liability immunity provision in a proposed bill, at least 11 states around the country have chosen not to wait for the possible federal legislation. Pointing to a provision in the recent Utah bill, Representative Gannon asked if the alliance has taken a position regarding improving worker's compensation coverage for first responders. Ms. Merritt responded that the alliance has no position on worker's compensation for first responders but she stated that she will discuss Utah's provision with alliance members.

Representative Troy asked if other states' legislation include exemptions for spouses and children of employers. Ms. Merritt shared that she had not seen specific exemptions for them but agreed to look into it and report back. Representative Troy followed-up, commenting that if a business is grossly negligent, it should be held accountable to the standards that we set.

Senator Lakey asked if the alliance is requesting a special session to address the issue. Ms. Merritt responded that the alliance is asking the Legislature to convene a special session. Representative Wintrow asked what is deficient in the law that we need to address, in this time when it is so difficult to prove negligence because of the community interaction. Ms. Merritt agreed that it is very difficult to prove this, but she opined the issue is the time demands litigation exacts on the businesses when they are working in good faith to be open and provide a safe environment. Representative Scott asked Ms. Merritt if she was aware of any lawsuits concerning the forced wearing of face masks within the business community. Ms. Merritt stated that she has not heard of any lawsuits on this topic.

Cochair Chaney introduced **Mr. Daniel Luker, representing the Idaho Trial Lawyers Association.** Mr. Luker began his [presentation](#) by observing that Idaho has a system in place that protects citizen's right to trial by jury. Generally, Idaho businesses operate in a way that safeguards their patrons and employees, and when they don't, there are legal consequences for those actions following established standards. He stated that:

- Employees are protected by worker's compensation;
- Governmental entities, including schools, are protected by the Idaho Tort Claims Act; and
- All businesses are protected under the law because whoever brings a claim has to prove that claim.

He stated that the legal system in place was able to handle earlier crises, and then opined that it can handle this one. Mr. Luker emphasized that the system in place is flexible because it is based on the community standard of care. He encouraged the working group to let the system work.

Representative Thayne asked Mr. Luker to comment on the Utah legislation and Mr. Luker responded that Utah's legislation is pointed, specific, easily understandable, and it has a sunset clause. If the Legislature takes up legislation to respond to the pandemic emergency, Mr. Luker suggested that Utah's legislation is an apt model to review. Representative Wintrow asked Mr. Luker to identify the winner and losers with proposed legislation that limits liability of some parties. Mr. Luker responded by cautioning against changing the present balance, because that would shift the responsibility away from those who control the risks to the public at large.

Cochair Chaney introduced **Sheriff Kieran Donahue, member of the Idaho Sheriff's Association.** Sheriff Donahue stated that the association wants protection from liability for its members and asked the Legislature to convene a special session to provide for this. He explained that protections for sheriffs and public law enforcement officers are necessary because exposure to litigation is high for the association's personnel as they perform their duties and respond to emergencies. Sheriff Donahue detailed some of the roles played on a daily basis by officers responsible for both the Idaho jails and the courts. He observed that there are no areas where members of his association are not effected yet they are in contact with people who can put forward lawsuits. He asked the Legislature to protect those that are inherently at risk as they perform their critical functions of law enforcement, assuring them that the association's members need immunity.

Cochair Chaney introduced **Mr. Ken McClure, Coordinator of the Idaho Liability Reform Coalition.** Mr. McClure stated that the coalition wished to add their voice to the call for a special session to address this issue. He remarked that though Idaho's liability system does work relatively well in regular times, it is not nimble in novel times. He observed that Idaho law is deficient in addressing the emergency situation. He stated the importance of providing certainty to those who presently are not sure what the standard of care is. Senator Lakey asked Mr. McClure what he sees as the appropriate and necessary scope of protection. Senator Lakey also asked if Mr. McClure was proposing a "reckless" standard of care. Mr. McClure stated normal rules work for normal times, adding that a different set of rules are needed in an emergency to get things done. The uncertainty of how to act in an emergency or pandemic creates a paralysis. He observed that Idaho statutes do not allow them to act as they need to. He added that any legislation created to respond to this

should not be Covid-19 specific. He also suggested the legislation should apply the term "reckless" as that term was defined last session, so that someone acting in good faith and not reckless would be assured they are okay to do that which they believe they should do.

Representative Kerby asked Mr. McClure to respond to the assertion made earlier that governmental entity liability coverage is addressed by the Idaho Tort Claims Act. Also, he asked Mr. McClure what the legislative priority should be when addressing this topic special session. Mr. McClure first stated that he is not an expert on the Tort Claims Act, but observed that he did not think it was robust enough to address all the concerns discussed earlier in this meeting. He suggested that if the Legislature is going to enact legislation, they enact legislation that can be applied broadly, not just to schools, not just to premises liability, not just to employer liability, but rather legislation that would set standards for the behavior of all citizens in Idaho. Senator Lee asked how could we stave off frivolous lawsuits. Mr. McClure answered that there are mechanisms in the rules that are designed to discourage the filing of frivolous law suits but often the determination that a certain claim is frivolous doesn't occur until well along in the process. He urged that the Legislature enact a provision to discourage frivolous law suits and to encourage action.

Representative Chaney asked Mr. McClure why he thinks a "reckless" standard of care is a more appropriate standard than a "gross negligence" standard. Mr. McClure replied that under the current Idaho pattern jury instructions, the definition of gross negligence is just a little bit more than negligence. In normal situations, this definition of gross negligence is okay but the cases we've been talking about are not normal, they occur in times of emergency and something should be done.

Representative Gannon asked how a jury can determine whether or not wearing a mask constitutes recklessness. Mr. McClure answered that if the law say "thou shalt wear a mask" and you don't follow the law and someone is injured because of it you should be held accountable. If there isn't a mask requirement the jury decides what the standard of care is. Mr. McClure explained that this is what the coalition is trying to avoid , instead they are asking the Legislature to enact a provision that gives the person who makes the decision in good faith the protection for having made a decision.

#### **Public Testimony: Input on Possible Covid-19 Liability Reform**

Cochair Chaney greeted those gathered to testify and reminded them that they had 3 minutes to present their comments.

Cochair Chaney called upon **Mr. Bruce Skaug, an attorney from Legislative District 12**. Mr. Skaug requested that if the Legislature convenes a special session that the members meet in-person at the Statehouse, and not via Zoom. He stated he is hesitant to support granting any special liability for persons or entities that do bad things that hurt other people. He encouraged the legislators to look to the Utah model if they plan to enact Covid-19 legislation. He asked them to leave worker's compensation alone and make sure to include a sunset provision in any legislation they consider.

Cochair Chaney called upon **Ms. Francoise Cleveland, the Director for Advocacy for AARP-Idaho**. Speaking on behalf the nearly 186,000 AARP Idaho members, Ms. Cleveland shared her group's strong opposition to proposals that grant immunity related to Covid-19 for nursing homes, assisted living facilities, and other long-term facilities. She asked the legislators to hold facilities accountable when residents are harmed, neglected or abused. Noting there are more than 4,100 nursing home residents in the state, she opined that it is essential that long-term health providers be held responsible for negligence.

Cochair Chaney called upon **Ms. Lisa Anderson, the Public Policy Director for the Alzheimer's Association of Greater Idaho**. She stated that Covid-19 pandemic continues to create additional challenges for people living with Alzheimer's, their families, and their caregivers. Long-term health facilities are particularly experiencing these challenges. Items the association wishes legislators consider when crafting liability-related legislation include:

- Providers should be held to a high standard;

- Substantial support from local, state and federal authorities should continue and increase as needed;
- Residents and their families should always have the ability to pursue a lawsuit in the case of gross negligence, definitive malice, and willful misconduct; and
- At a minimum proposals that effect long-term and community based care settings from liability should be temporary and must include indication of an end date and should apply only during the specified emergency.

### **Committee Discussion**

Following the public testimony, Co-chair Chaney encouraged the working group members to contact the cochairs with their additional observations or related information regarding the presentations. Cochair Lakey stated that in looking to Thursday's meeting, he anticipates discussion regarding the need for a special session and consideration of potential legislation. Representative Chaney asked members with specific legislation ideas to send their ideas forward to the cochairs by Wednesday at 11 a.m. Senator Burgoyne asked for more clarity regarding the Thursday meeting's agenda.

Cochair Lakey stated their intent of the next meeting is to have a discussion based on the comments received and to have working drafts available for members to be able to consider. Cochair Chaney stated they would like to leave open the possibility for the working group to request of the executive a special session in time to adopt that recommendation prior to school opening. A discussion ensued between working group members and the cochairs regarding the preparatory work requested for the next meeting, including the drafting of possible policy recommendations for working group review and consideration.

Representative Scott asked for LSO staff to consolidate the emails to members so that there is just one staff member contact communicating with the working group and Cochair Chaney replied he would relay that message to LSO. She also asked if there was word from the governor regarding rescinding the emergency order based on science. Cochair Chaney that he wasn't aware of anything regarding the emergency order. Representative Troy asked for clarification related to confidentiality when working with Microsoft Word documents, drafts, and RSs.

Ms. Maulin responded to the confidentiality question, clarifying that working documents not in RS form do not fall under RS confidentiality protocols. She stated that there have been special sessions convened related to a specific bill, with the governor referring to a draft or bill in his declaration. And, she observed that members can also provide recommendations of draft language for consideration during a special session. Member discussion continued on the challenges of addressing the complexities of the issue within such tight time constraints. Representative Goesling asked the cochairs to provide the working group members with the Utah legislation. Cochair Chaney stated that the next meeting will be Thursday, July 30th, at which time the members will discuss proposed legislation and possible recommendations to the governor.

The meeting was adjourned at 12:15 p.m.